IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.6623 OF 2003

Sau Hausabai Balkrishna Kalsekar ...Petitioner
Vs.
Shri Tukaram Daji Patil & Anr. ...Respondents

Shri Dilip Bodake for the Petitioner.

CORAM : D. B. BHOSALE, J.
DATE : NOVEMBER 29, 2005.

P.C.:

1. This Petition is directed against the order dated 28.07.2003 passed by the Joint Civil Judge, Patan by which the Application Exhibit 31 filed in the Regular Civil Suit No.14 of 2003 was rejected. The Application Exhibit 31 was filed by the Petitioner-Defendant for setting aside "no written" statement order and for allowing the Petitioner to file written statement on record. The prayer of the Petitioner was, however, rejected mainly on the ground that the Application Exhibit 31 was filed beyond ninety days and hence, it was not tenable in view of the provision of the Order VIII Rule 1 of the Code of Civil Procedure.

2. This Court had an occasion to consider the provisions of the Order VIII Rule 1 of the Code of Civil Procedure in Shailaja A. Sawant(DR.) Vs. Sayajirao Ganpatroa Patil reported in 2004(2) Mh.LJ,

Page 419. In that case, this Court has held that the provisions of Order VIII Rule 1 are directive in character and not mandatory and that they give power to the Court, in a given case, to extend the time and allow the Defendants to file written statement beyond the time prescribed under the said provision. Keeping that in view, in my opinion, the appropriate course would be to set aside the impugned order and direct the Trial Court to decide the Application Exhibit 31 afresh in the light of the observations made by this Court in Shailaja Sawant's case (Supra) as also the judgment of the Division Bench reported in 2004(4) Mh.LJ, Page 739 upholding the law laid down in that case.

3. Hence, the following order:

: O R D E R :

i) The Order dated 28.07.2003 passed below Application-Exhibit 31 in Regular Civil Suit No.14 of 2003 is quashed and set aside.

ii) The Application Exhibit 31 is restored to file.

iii) The Trial Court shall decide that Application afresh keeping in view the law laid down by this Court in Shailaja Sawant’s case and/or the Judgment of the Division Bench of this Court reported in 2004(4) Mh.LJ, Page 739.

iv) The Trial Court shall decide the said Application Exhibit 31 within three months from the date of receipt of this order.

v) The Writ Petition is accordingly disposed of.

JUDGE